

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-120729-02

Date:

September 17, 2002

X =

Y =

Z =

State =

Fund 1 =

Fund 2 =

Dear :

This letter responds to a letter dated February 25, 2002, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling that proposed amendments to the declarations of trust of Fund 1 and Fund 2 (collectively, the Funds) will not cause the Funds to fail to satisfy the requirements for a pooled income fund under § 642(c)(5) of the Internal Revenue Code.

The information submitted states that X is a charitable corporation formed under the laws of State. The Funds are funds established by X which are represented as currently qualifying as pooled income funds under § 642(c)(5). Subsequent to the establishment of the Funds, X and Y founded Z. Both Y and Z are represented as being charitable corporations described in § 501(c)(3). Z currently exercises corporate control over X and Y and the various affiliated § 501(c)(3) organizations directly or indirectly controlled by X or Y, as well as other charitable organizations not controlled by X or Y (collectively, all of the organizations controlled by Z are referred to as the Z Affiliates).

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X proposes to amend the declarations of trust of the Funds to allow donors to the Funds to benefit the Z Affiliates, as well as X. The proposed amendments to the declarations of trust of Fund 1 and Fund 2 are substantially identical.

The proposed amendments state that Article Eleventh of the original declaration of trust is deleted and is replaced as follows:

Upon the revocation or termination of the income interest of a designated beneficiary, or the last of such interests if there are more than one, the Trustee shall sever from the Fund and pay over to X an amount equal to the value of the units assigned to such income interest plus any income allocable thereto which has not been distributed as provided above. The value of such units comprising the remainder interest shall be their value as of the date on which the last regular payment was made before the termination of the beneficiary's income interest.

With respect to funds contributed on or after the date of this amendment, if the donor has so designated, upon the revocation or termination of the income interest of a designated beneficiary, or the last of such interests if there are more than one, the Trustee shall sever from the Fund and pay over to a Designated Affiliate (as defined below) an amount equal to the value of the units assigned to such income interest plus any income allocable thereto which has not been distributed as provided above. The value of such units comprising the remainder interest shall be their value as of the date on which the last regular payment was made before the termination of the beneficiary's income interest. For purposes of this Article Eleventh, a Designated Affiliate is an organization previously designated by the donor which, at the time the Trustee is to pay over funds for its benefit, both (i) satisfies the requirements for tax-exempt status under § 501(c)(3), and (ii) is directly or indirectly subject to common corporate control with X. If an organization has been previously designated by the donor but fails to satisfy any of the requirements of this paragraph at the time the Trustee is to pay over funds for its benefit, the Trustee shall pay over such funds to X for its own purposes or to another organization chosen by X which satisfies the requirements of this paragraph at such time.

No Designated Affiliate is permitted to sever its interest in the Fund prior to the death of the designated beneficiary of the income interest to which the Designated Affiliate's interest in the Fund relates except in the instance when a designated beneficiary expressly releases during such beneficiary's lifetime all of the income interest otherwise payable to such beneficiary by the Trustee.

If at the time of the severance of the remainder interest X or a Designated Affiliate has ceased to exist and has not merged with or terminated in favor of a qualifying successor public charity (an organizations described in §§ 170(b)(1)(A)(i) through (iv)), or, for any other reason, is not a public charity, the amount severed shall be paid to a public charity selected by X or, if it is not then in existence, by the Trustee.

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X additionally represents that each Designated Affiliate will execute an express written consent to be included as a recipient of a remainder interest in the Funds.

Section 4.01(37) of Rev. Proc. 2002-3, 2002-1 I.R.B. 117, 123, provides that rulings will not ordinarily be issued on whether a pooled income fund satisfies the requirements described in § 642(c)(5). Rev. Proc. 88-53, 1988-2 C.B. 712 provides sample trust provisions for pooled income funds. By following the sample trust provisions, taxpayers can be assured that the Service will recognize the trust as satisfying the requirements of § 642(c)(5) if the trust (1) operates consistently with the terms of the trust instrument and (2) is a valid trust under local law. However, the instant case presents an issue not addressed by the sample trust provisions of Rev. Proc. 88-53, as to whether the governing instruments of the Funds may allow charitable organizations in addition to X to be named as the recipients of the remainder interests in the property contributed to the Funds.

Section 642(c)(5) provides that for purposes of § 642(c)(3), a pooled income fund is a trust (A) to which each donor transfers property, contributing an irrevocable remainder interest in such property to or for the use of an organization described in § 170(b)(1)(A) (other than in clauses (vii) or (viii)), and retaining an income interest for the life of one or more beneficiaries (living at the time of such transfer), (B) in which the property transferred by each donor is commingled with property transferred by other donors who have made or make similar transfers, (C) which cannot have investments in securities which are exempt from taxes imposed by subtitle A, (D) which includes only amounts received from transfers which meet the requirements of § 642(c)(5), (E) which is maintained by the organization to which the remainder interest is contributed and of which no donor or beneficiary of an income interest is a trustee, and (F) from which each beneficiary of an income interest receives income, for each year for which he is entitled to receive the income interest referred to in § 642(c)(5)(A), determined by the rate of return earned by the trust for such year.

Section 1.642(c)-5(b)(5) of the Income Tax Regulations provides that a pooled income fund must be maintained by the same public charity to or for the use of which the irrevocable remainder interest is contributed. The requirement of maintenance will be satisfied where the public charity exercises control directly or indirectly over the fund. For example, this requirement of control shall ordinarily be met when the public charity has the power to remove the trustee or trustees of the fund and designate a new trustee or trustees. A national organization which carries out its purposes through local organizations, chapters, or auxiliary bodies with which it has an identity of aims and purposes may maintain a pooled income fund (otherwise satisfying the requirements of § 1.642(c)-5(b)(5)) in which one or more local organizations, chapters, or auxiliary bodies which are public charities have been named as recipients of the remainder interests. For example, a national church body may maintain a pooled income fund where donors have transferred property to such fund and contributed an irrevocable remainder interest therein to or for the use of various local churches or educational

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institutions of such body. The fact that such local organizations or chapters have been separately incorporated from the national organization is immaterial.

Rev. Rul. 92-107, 1992-2 C.B. 120, holds that a proposed pooled income fund maintained by a national organization for itself and its local organizations meets the maintenance requirement of § 642(c)(2)(E) because (1) the national and local organizations were affiliated and shared an identity of aims and purposes; (2) the local organizations that could be named as recipients of a remainder interest expressly consented to be included in the fund; (3) the governing instrument provided that a designated local organization could not sever its interest in the fund prior to the death of the named income beneficiary; and (4) the governing instrument provided that if the designated local organization is no longer affiliated with the national organization at the time the remainder interest is to be transferred, the remainder interest will be transferred to the national organization or to another affiliated local organization chosen by the national organization.

Based solely on the facts and representations submitted, we conclude that the proposed amendments to the declarations of trust of the Funds satisfy the requirements set forth in Rev. Rul. 92-107 for a pooled income fund with multiple charitable beneficiaries to meet the maintenance requirement of § 642(c)(2)(E) and § 1.642(c)-5(b)(5). Therefore, the proposed amendments will not cause the Funds to fail to satisfy the requirements for a pooled income fund under § 642(c)(5).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, copies of this letter are being forwarded to X's authorized representatives.

Sincerely yours,

J. THOMAS HINES
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

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